**WPMB No. 472 of 2003**

Sushant Pant --------- Petitioner

Versus

State of Uttaranchal

And others ---------- Respondents

**Hon'ble Irshad Hussain J.**

**Hon'ble M.M. Ghildiyal J.**

**(Delivered by Hon'ble M.M. Ghildiyal J.)**

By means of this writ petition the petitioner has prayed for a direction to respondents to grant written approval to the petitioner to carry away the minerals already mined by him as per Rule 14 (1) (iii) of Mines and Minerals Concession Rules, 1960 (hereinafter referred to " 1960 Rules").

The brief facts of the case are that the petitioner applied to the State Government for grant of prospecting license under the 1960 rules. The said license was granted and a license deed was executed.

Heard Sri P.S.Adhikari learned counsel for the petitioner and learned Standing Counsel.

Rule 14 of the 1960 rules provides conditions for grant of prospecting license. Relevant para of Rule 14 of 1960 Rules is quoted hereunder:-

"(1) Every prospecting license granted under these rules shall, in addition to any other conditions that may be specified, therein be subject to the following conditions, namely-

(i) the licensee shall pay such prospecting fee as may be fixed by the State Government, being not less than rupee one and not more than rupees ten per hectare of land covered by the license for each or part of a year on part of a year of the period for which the license is granted or renewed;

(ii) the licensee may win and carry for purposes other than commercial purposes-

(a) any quantity of such minerals the limits specified under Column 3 of Schedule III without any payment.

(b) any quantity of such minerals not exceeding the limit specified under Column 4 of Schedule III, on payment of royalty for the time being specified in the Second Schedule to the Act in respect of those minerals.

Provided that if any quantity in excess of the quantities specified in sub-clause (b) is won and carried away, the State Government, may recover the cost of the excess quantity of minerals won and carried away.

(c) with the written approval of the State Government the licensee may carry away quantities of minerals in excess of the limits specified in Schedule III, on payment of royalty for the time being specified in the Second Schedule to the Act, for chemical, metallurgical, ore-dressing and other test purpose."

The petitioner won 1100 tonnes of soft stones. In part I of the agreement it is provided that the licensee may win and carry away for the purposes other than commercial any quantity of such minerals within the limits specified under Column 3 of Schedule III without any payment and with the written approval of the State Government the licensee may carry away quantities of minerals in excess of the limits specified in Schedule III, on payment of royalty for the time being specified in the Second Schedule to the Act, for chemical, metallurgical, ore-dressing and other test purpose.

Since the petitioner won 1100 tonnes of soft stones he applied for permission to carry away the excess quantity of soft stones vide his letter dated 27.12.2002. According to the petitioner the District Magistrate, Pithoragarh has also recommended the matter to the government to carry away the excess quantity of soft stone won by the petitioner. The government vide letter dated 15.01.2003 granted permission on the condition that the petitioner will be permitted to carry away the excess quantity of 1100 tonnes of soft stone only after he deposits the money equivalent to the market rate of the said soft stone in the office of the District Magistrate Pithoragarh. This order was passed under proviso to Rule 14 (1) (ii) (b) of 1960 rules.

It is not disputed that the petitioner was entitled to carry away 50 tonnes of soft stone without any payment and 2000 tonnes on payment of

royalty as provided in schedule III of the 1960 rules. Since he won more than specified in schedule III the government passed order for permission to carry away the said quantity under proviso to Rule 14 (1) (iii) of the 1960 Rules. The petitioner has not challenged this order and has prayed for issue of writ of mandamus for a direction to respondents to grant written approval to the petitioner to carry away minerals and has further prayed to calculate the rate of royalty as provided under Schedule II of 1960 Rules. In consequence to the letter dated 15.01.2003 the Officer-in-charge Mining vide order dated 22.03.2003 directed the petitioner to deposit the cost of soft stone at market value so that permission to carry away the minerals may be granted to the petitioner. The learned counsel for the petitioner has stated that vide letter dated 19.01.2002 the Additional Secretary, Government of Uttaranchal permitted Sri Rajendra Singh Kaniyal to carry away the excess quantity only after depositing the royalty. He has further brought to our notice to the letter dated 14.07.1997 whereby the State of U.P. has given similar permission of carrying 5000 tonnes of soft stone only on the basis of royalty whereas the petitioner is being required to deposit the cost of the minerals at the market rate.

The learned counsel for the petitioner has submitted that there is no restriction to win more than 50 tonnes or 200 tonnes of soft stone under the prospecting license. By the rules no quantity has been fixed to win the minerals under prospecting license. Further, there is certain restriction on carrying away the minerals, which is prescribed in the schedule III of the rules. The prospecting licensee can take away 50 tonnes of minerals without any payment and upto 200 tonnes minerals on payment of royalty. The prospecting license is granted to find out the quality of minerals and the place from where the quality of minerals can be obtained. For this purpose the schedule prescribed 50 tonnes of minerals to take away without payment and upto 200 tonnes on payment of royalty. In the garb of prospecting license the licensee cannot be permitted to win thousands of tones of minerals on the pretext of metallurgical test and connected purpose then to take away such a huge quantity without depositing the cost of minerals. Moreover there is nothing on record to show any nexus between the metallurgical test of minerals and such a huge quantity won by the

petitioner. In the present case the petitioner has sought permission to carry the excess quantity of 1100 tonnes of soft stones on payment of royalty, which has been rightly rejected by the government. The government has granted permission to carry away such quantity only after depositing the cost at the market rate. The order is fully justified. The petitioner has also claimed parity by stating that some of the persons have been granted permission earlier. The petitioner cannot get benefit on the basis of parity of order, which has been passed against the rules. The court cannot direct to perpetuate a wrongful action.

For the reasons stated above we find no force in the writ petition. The writ petition is dismissed. No order as to costs.

(**M.M. Ghildiyal J)**

June 26, 2003

MPS